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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RAUL MEJIA, Defendant and Appellant.	G051527 (Super. Ct. No. 96CF2994) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Thomas A. Glazier, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina, Michael Pulos and Samantha Begovich, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Raul Mejia appeals from an order denying his application to have his felony conviction for grand theft of cargo (Pen. Code, § 487h; all further statutory references are to this code) designated as a misdemeanor under section 1170.18, subd. (g). He argues the trial court erred by concluding his conviction for violation of section 487h was categorically ineligible for redesignation as a misdemeanor under section 1170.18, and denying his application on that basis. He also argues it is the prosecutor's burden to prove the value of the property he stole exceeded $950, and thus the dearth of any evidence in the record on that point means he is entitled to have his crime redesignated a misdemeanor as a matter of law.

We affirm. Mejia's first argument is based solely on the trial court's vague comment that his application was denied as to this particular conviction because it "doesn't fit statutorily." But as his right to have his felony conviction redesignated a misdemeanor is entirely created and governed by statute, the comment does not convey any specific reasoning. We presume the court understood the statutory scheme, including that all theft crimes involving the theft of money, labor or property valued at $950 or less – including those governed by section 487h – were eligible to be redesignated as misdemeanors. Instead, the fatal flaw in Mejia's application was his failure to offer the court any evidence – or even any assertion – that his conviction for grand theft of cargo actually involved goods worth $950 or less, and was thus eligible for redesignation. Contrary to Mejia's assertion, it was his burden as the party requesting relief to demonstrate – at least initially – that his felony conviction was appropriate for redesignation as a misdemeanor. Because he failed to carry that burden, the court did not err by denying his application.

FACTS

In 1996, Mejia (under the name Nicanor Rodriguez) was charged with four counts of first degree burglary and one count of grand theft of cargo. He was found guilty of all charges in 1997 and was sentenced to eight years in state prison. He completed his sentence.

In 2014, California voters enacted Proposition 47, which "created a new resentencing provision: section 1170.18." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092.) "Under section 1170.18, a person 'currently serving' a felony sentence for an offence that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47." (*Ibid*.) And a person who has already completed such a felony sentence may "file an application . . . to have the felony conviction or convictions designated as misdemeanors." (§ 1170.18, subd. (f).)

Proposition 47 also added section 490.2, which specifies that "[n]otwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor [unless the person has a disqualifying prior conviction]." (§ 490, subd. (a).)

In December 2014, Mejia filed an application to have his conviction on the count of grand theft of cargo redesignated a misdemeanor. His single page application does not describe the circumstances of the offence or make any assertion as to the value of the property stolen; nor does it reference or incorporate any evidence pertaining to those issues. The district attorney opposed the application "due to the nature of the charge and the fact that the value exceeds $950." The trial court denied the application, stating only that "it doesn't fit statutorily."

DISCUSSION

Mejia's first argument is that the trial court erred by concluding that a felony conviction for violation of section 487h – grand theft of cargo – is not eligible for redesignation as a misdemeanor under section 1170.18. He points out that since section 490.2, which was also enacted as part of Proposition 47, states that "any . . . provision of law defining grand theft" shall be classified as a misdemeanor if the value of the property taken does not exceed $950, his crime falls within that description as a matter of law.

But the argument is a red herring, based solely on the court's statement, in denying his application, that "it doesn't fit statutorily." That statement is too vague to be ascribed any particular meaning because the remedy Mejia sought to avail himself of is purely statutory, and thus *any* perceived deficiency in his application could fairly be described as causing it to not fit the statute. In effect, the court merely conveyed that the application was denied because Mejia was not entitled to relief.

In any event, "[w]e do not review the reasons for the trial court's ruling; if it is correct on any theory, even one not mentioned by the court, and even if the court made its ruling for the wrong reason, it will be affirmed." (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1191; *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) Here, Mejia's application was properly denied because he made no showing that his conviction for violation of section 487h involved the theft of property that did not exceed $950 in value, and thus that it was eligible to be redesignated a misdemeanor in accordance with section 490.2.

Mejia acknowledges this omission, and forthrightly admits "[t]he record contained no facts regarding the underlying crime." He then argues it is the prosecutor's burden, not his, to establish the value of the goods he stole for purposes of reclassification under section 1170.18, and that consequently the absence of evidence on this issue establishes he is eligible for relief. We reject that argument.

Mejia's contention is grounded on the general notion that "[d]ue process requires the prosecution to prove every fact necessary to constitute the crime." But the prosecutor has long since done that in this case. Mejia was convicted of the crime – properly characterized as a felony – in 1997. There is no dispute about that. In 2014, Proposition 47 gave *the person convicted of a felony* the opportunity to apply for a redesignation of that crime. Thus, it is Mejia, not the district attorney, who is seeking relief in this matter. And as explained in *People v. Sherow* (2015) 239 Cal.App.4th 875 (*Sherow*), "[a]s an ordinary proposition: '"A party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting."'" (*Id.* at p. 879.)

Indeed, *Sherow* squarely rejected the very argument asserted by Mejia in this case: "[Petitioner] contends it would violate due process to place the initial burden of proof on him to show eligibility for resentencing. His arguments, however, are directed to principles regarding proof of guilt of an alleged crime. The cases he cites, dealing with such matters as the burden of proof to prove the crime of grand theft, address the question of whether in the initial prosecution for certain alleged crimes, the People must prove the amount of the theft meets the criteria for the offense. . . . [¶] The difficulty with a due process argument based on the prosecutor's burden of proof in the initial prosecution for an offense is that the resentencing provisions of Proposition 47 deal with persons who have already been proved guilty of their offenses beyond a reasonable doubt. Under this remedial statute, a petitioner is claiming the crime for which the person has been convicted would be a misdemeanor if tried after the enactment of the proposition." (*Sherow, supra*, 239 Cal.App.4th at pp. 879-880.) We agree with that analysis.

As it is Mejia – the person convicted of the felony – who is seeking relief from the court in this matter, it is his burden to offer the court some evidence that he is entitled to such relief; i.e., that the felony of which he was previously convicted is

eligible to be redesignated a misdemeanor. As Mejia made no effort to do that in this case, the court did not err by denying his application.

DISPOSITION

The order denying Mejia's petition for resentencing is affirmed without prejudice to subsequent consideration of a properly supported petition.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.